

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *cg* D.C.
05 OCT 18 AM 10:47

THOMAS M GOULD
CLERK, U.S. DISTRICT COURT
WD OF TN, MEMPHIS

FITEC INTERNATIONAL, INC.,)
A TENNESSEE CORPORATION,)
)
 Plaintiff,)
)
vs.) No. 04-2326-DV
)
PAUL C. ARDERN, AN INDIVIDUAL)
RESIDENT OF THE STATE OF)
FLORIDA,)
)
 Defendant, Counter-)
 Plaintiff,)
)
vs.)
)
FITEC INTERNATIONAL, INC.,)
A TENNESSEE CORPORATION,)
)
 Counter-Defendant.)

ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED
COMPLAINT

Before the court is the October 5, 2005 motion of the plaintiff, Fitec International ("Fitec"), pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, for leave to file its First Amended Complaint. The defendant, Paul C. Ardern ("Ardern"), opposes the motion on the grounds that there has been undue delay in seeking the amendment, and that Ardern will suffer undue prejudice in responding to the proposed amended complaint.

Rule 15(a) provides that leave to amend a pleading "shall be

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freely given when justice so requires." Under Rule 15(a), the court has some discretion in allowing amendments. Factors to consider include prejudice to the opposing party, delay, and futility of amendments. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Fitec argues that, although the deadline for amending pleadings was May 1, 2005, justice requires that it be allowed to amend its complaint to supplement and clarify its claims against Ardern. According to Fitec, the proposed amendment is not the result of undue delay, bad faith or dilatory motive. In addition, Fitec suggests that the proposed amendment will not unduly prejudice Ardern because the parties are currently in the midst of discovery, no depositions have been taken, and the discovery deadline does not expire until February 15, 2006.

Ardern argues in opposition that the proposed amendment is the result of undue delay, noting that Fitec has not provided any explanation as to why the issues in the proposed amended complaint were not brought to the court's attention earlier. Ardern states that during the last modification of the scheduling order, the parties agreed not to change the deadline for amending pleadings or conducting any new written discovery because the litigation had progressed to the point where only some specific discovery needed to be conducted.

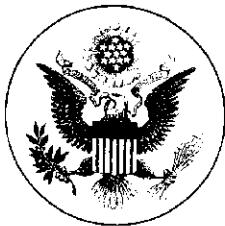
Ardern also argues that Fitec's proposed amended complaint

will cause him to suffer undue prejudice. According to Ardern, Fitec's proposed amended complaint includes three new and separate causes of action, that "will require that an entire new case be started with effectively a new scheduling order on the level of complex litigation." On the other hand, Ardern argues that justice does not require that the court grant the current motion because Fitec is not precluded by law or by statute of limitation from bringing these separate causes of action in a separate complaint.

Although Fitec did not specifically state a reason for failing to meet the May 1, 2005 deadline for amending pleadings, this court finds nevertheless that allowing Fitec to file a proposed amended complaint will not unduly prejudice Ardern because there is ample time to conduct discovery. The parties are currently in the midst of discovery, no depositions have been taken, and the parties have four months to conduct discovery before the February 15, 2006 discovery deadline. The plaintiff's motion for leave to file its first amended complaint is therefore granted.

IT IS SO ORDERED this 17th day of October, 2005.


Diane K. Vescovo
DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 46 in case 2:04-CV-02326 was distributed by fax, mail, or direct printing on October 18, 2005 to the parties listed.

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US DISTRICT COURT